REQUEST FOR BOARD ACTION

ITEM NO. 17.

DATE OF MEETING: February 21, 2011

REQUESTED BY: Kyle Breuer, Director, Department of Planning and Community Development

SHORT TITLE: Public Hearing and Resolution to Amend Article 6 and Appendix A-Definitions, of the Unified Development Ordinance.

BACKGROUND: Currently, the Unified Development Ordinance (UDO) requires a forty five (45') foot access easement/right-of-way for newly created 3-lot subdivisions and family subdivisions. This requirement is an important process due to the legal access requirements it gives a future property owner, etc. Problems have arisen from this requirement not in the legality of the requirement, but in the physical requirements of this regulation. The way that this regulation is enforced is by only recording the easement on a map and not physically constructing any sort of "passable" surface for access.

Staff is proposing to add regulations that would require a subdivider to improve an access easement (new) to the standards that emergency response vehicles may respond and an address be given.

SPECIFIC ACTION REQUESTED: To hold a public hearing and consider a resolution to amend the Unified Development Ordinance, Article 6, and Appendix A-Definitions. The proposed planning staff report and amendment is attached.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, that on February 21, 2011 the Pender County Board of Commissioners (approved, modified, denied) a zoning text amendment request, as described herein. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED_____DENIED_____UNANIMOUS_____

YEA VOTES: Brown: _____ Tate: _____ Rivenbark: _____ Ward: _____ Williams: _____

_____ 2-21-2011
George R. Brown, Chairman Date

_____ 2-21-2011
ATTEST DATE

PLANNING STAFF REPORT
Zoning Text Amendment

SUMMARY:

Hearing Date: Planning Board – January 4, 2011

PLANNING STAFF REPORT
Zoning Text Amendment

SUMMARY:

Hearing Date: Planning Board – January 4, 2011
Board of Commissioners – February 21, 2011
Applicant: Administrator, Division of Planning
Application Number: 11-02-21-01 Pender County

Text Amendment Proposal: The request consists of amending the Pender County Unified Development Ordinance (UDO): Article 6 and Appendix – A Definitions.

Background: The following text amendments are the result of various administrative discussions and situational circumstances that have been brought to Staff's attention since the last text amendment had been approved.

Administrator Recommendation: Administrator respectfully recommends **amending** the requested Articles as follows:

6.2 FAMILY DIVISION SUBMISSION AND APPROVAL REQUIREMENTS

6.2.1 Limitations

A. Family subdivisions are permitted on parcels that have been created and recorded in the Registry before the effective date of this ordinance.

B. A total of three parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this ordinance and the zoning ordinance) per qualified resident household will be allowed to be created under the family subdivision provisions.

C. The division does not create a new public or private street.

6.2.2 Requirements

A. The following shall be submitted to the Administrator with each proposal for a Family Division:

1) Plat prepared as required by NCGS §47-30,
2) The plat shall be clearly designated "Family Subdivision" in bold letters,
3) The following statement shall appear on the plat and be signed by the Grantor(s) and Grantee(s) prior to approval:

The Grantor(s) and Grantee(s) certify that the Grantee(s) is within three (3) degrees of collateral kinship to the Grantor(s), and that the purpose of this waiver is not to circumvent the provisions of the Pender County Unified Development Ordinance, and that none of the lots shall be conveyed to non-family members for a period of not less than five (5) years.

_____ _____
Grantor *Grantee*

Commentary: "Siblings are related to each other in the second degree and uncle and niece are related to each other in the third degree"

4) Certification by the Licensed Professional preparing the plat that each lot is adjacent to a natural drainage way or perennial stream or a 20 ft. drainage easement is recorded from each lot toward a natural drainage way or a perennial stream or if the lot or lots front on a NCDOT maintained road, approval from NCDOT for such lots to drain to the public road,
5) The plat shows any designated Special Flood Hazard Areas located within the subdivision,
6) The plat shows any designated Areas of Environmental Concern located within the subdivision
7) An Improvement Authorization Permit from Environmental Health for each lot to be created, a soil suitability analysis for each lot to be created or approval to connect to existing public sewer
8) The lots, other than those restricted for building development, shown on the plat meet the requirements of this Ordinance,
9) Waste water disposal requirements – One of the following must be met:
   a) An Improvement Authorization Permit has been issued for each of the parcels,
   b) The soil suitability analysis shows that at least 5,000 sq. ft. of each lot is suitable for traditional on site waste disposal and the required 5000 sq. ft. is not within 10 ft of any lot boundary,
   c) Approval has been granted to connect to public sewer or community sewer or
   d) Lots not meeting the requirements of i. ii. or iii. are indicated by the following note: "THIS PARCEL CANNOT BE USED FOR BUILDING DEVELOPMENT, UNLESS AN APPROVED WASTE WATER DISPOSAL METHOD HAS BEEN APPROVED AND PERMITTED BY THE PENDER COUNTY ENVIRONMENTAL HEALTH DEPARTMENT OR APPROPRATE STATE AGENCY OR UNLESS A NEW PLAT IS APPROVED AND RECORDED AS REQUIRED UNDER THIS ORDINANCE."
      i) For alternative, see Design Requirements, Lots Section of this ordinance for "Special Purpose Lots"
10) The lots created have either direct access to a public street, private street or private access easement as defined in this ordinance,
11) A minimum passable travel way 20 feet wide shall be provided within a forty five (45') foot easement at time of zoning approval.
12) Clearing and grubbing shall be completed five feet of each edge of the travel way;
13) Maintenance. Upon determination by the Administrator that such travel way as approved are not passable, the Administrator may, in addition to other remedies, prevent issuance of any further development approvals until such travel ways are in a proper state of maintenance as determined by the Administrator.
14) The Administrator shall review the subdivision to insure that the development will not block future access to properties that are adjacent to the lots.
15) The plat contains the following note: "All new access easements shown or designated on this plat, include the transfer of an easement to public entities and public utilities for the purpose of installation and maintenance of water, sewer, electric and communication lines."
16) The plat must contain the following note: "All new access easements shown or designated on this plat include the transfer of an easement to Pender County, its employees and agents for access for emergency personnel (police, fire & rescue) and Pender County and its employees for administration of all Pender County Ordinances."

6.4 3-LOT DIVISION ON AN ACCESS EASEMENT

6.4.1 Submission and Approval Requirements

A. Limitations - The following limitations will apply to three lot subdivisions:
   1) Three lot subdivisions located on an access easement will be limited to no more than three such parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this ordinance and the zoning ordinance) being created from any parcel that had been created and recorded in the Registry before March 29, 2004.
   2) The division does not create a new public or private street.

B. Requirements -The following shall be submitted to the Administrator with each proposal for a division of up to three lots fronting on an access easement that provides access to an existing NCDOT maintained public road:
   1) Plat prepared as required by NCGS §47-30,
   2) The plat shall be clearly designated "Three Lot Subdivision on Access Easement" in bold letters,

3) Certification by the Licensed Professional preparing the plat that each lot is adjacent to a natural drainage way or perennial stream or a 20 ft. drainage easement is recorded from each lot to a natural drainage way or a perennial stream or if the lot or lots front on a NCDOT maintained road, approval from NCDOT for such lots to drain to the public road,
4) The plat shows any designated Special Flood Hazard Areas located within the subdivision,
5) The plat shows any designated Areas of Environmental Concern located within the subdivision,
6) An Improvement Authorization Permit from Environmental Health for each lot to be created, a soil suitability analysis for each lot to be created or approval to connect to existing public sewer.
7) The lots, other than those restricted for building development or designated and reserved for open space, shown on the plat meet the requirements of the Zoning Ordinance,
8) Waste water disposal requirements – One of the following must be met:
   a) An Improvement Authorization Permit has been issued for each of the parcels,
   b) The soil suitability analysis shows that at least 5,000 sq. ft. of each lot is suitable for traditional on site waste disposal and the required 5,000 sq ft. is not within 10 ft of any lot boundary,
   c) Approval has been granted to connect to public sewer or community sewer, or
   a) Lots not meeting the requirements of a., b., or c. are indicated by the following note: "THIS PARCEL CANNOT BE USED FOR BUILDING DEVELOPMENT, UNLESS AN APPROVED WASTE WATER DISPOSAL METHOD HAS BEEN APPROVED AND PERMITTED BY THE PENDER COUNTY ENVIRONMENTAL HEALTH DEPARTMENT OR APPROPRATE STATE AGENCY OR UNLESS A NEW PLAT IS APPROVED AND RECORDED AS REQUIRED UNDER THIS ORDINANCE."
   d) For alternative, see Design Requirements, Lots Section of this ordinance for "Special Purpose Lots."
9) The lots created have access to an access easement as defined in this ordinance,
10) The access easement that provides access to a public street is no longer than 500 ft.
11) A minimum passable travel way 20 feet wide shall be provided within a forty five (45') foot easement at time of zoning approval.
12) Clearing and grubbing shall be completed five feet of each edge of the travel way;
13) Maintenance. Upon determination by the Administrator that such travel way as approved are not passable, the Administrator may, in addition to other remedies, prevent issuance of any further development approvals until such travel ways are in a proper state of maintenance as determined by the Administrator.
14) The Administrator determines that the subdivision complies with the limitations on Three Lot Subdivisions contained in the General Provisions Section of this ordinance.
15) The plat contains an ownership and dedication statement signed by the owner or owners.
16) The plat contains the following note: "All new access easements shown or designated on this plat, include the transfer of an easement to public entities and public utilities for the purpose of installation and maintenance of water, sewer, electric and communication lines."
17) The plat must contain the following note: "All new access easements shown or designated on this plat include the transfer of an easement to Pender County, its employees and agents for access for emergency personnel (police, fire & rescue) and Pender County and its employees for administration of all Pender County Ordinances."

APPENDIX A DEFINITIONS

PASSABLE TRAVEL WAY: Conditions which allow a passenger or emergency vehicle to negotiate the travel path using reasonable care. A passable travel way must be free of obstacles or obstructions.

The proposed changes have been advertised in the Pender Post and Topsail Voice on Wednesday, February 9, 2011 and Wednesday, February 16, 2011.

Evaluation:
As prescribed in the Pender County Unified Development Ordinance (UDO) Article 3.16.5 in evaluating any proposed ordinance text amendment, the Planning Board and the County Commissioners shall consider the following:

1) The extent to which the proposed text amendment is consistent with the remainder of the Ordinance, including, specifically, any purpose and intent statements;

2) The extent to which the proposed text amendment represents a new idea not considered in the existing Ordinance, or represents a revision necessitated by changing circumstances over time;
3) Whether or not the proposed text amendment corrects an error in the Ordinance; and
4) Whether or not the proposed text amendment revises the Ordinance to comply with state or federal statutes or case law.

In deciding whether to adopt a proposed Ordinance text amendment, the central issue before the County Commissioners is whether the proposed amendment advances the public health, safety or welfare and is consistent with any adopted County Land Use Plan documents, the CAMA Land Use Plan, and the specific intent of this Ordinance.

Comprehensive Land Use Plan Compliance:
Policy 2B.1.12
The County should consider conducting studies and engaging in special planning initiatives for major transportation corridors within its jurisdiction to implement supportive plans and ordinances to assist in accomplishing the following objectives: *preserving and maintaining existing and future transportation facilities and corridors; improving safety, site access and design standards.*

Staff Recommendation:
The proposed text amendment is consistent with the remainder of the Ordinance, including, specifically, any purpose and intent statements; therefore, staff is recommending approval of the amendments as presented. The Planning Board unanimously recommends approval of the request.

Planning Board

Motion: Williams Seconded: Millette

Approved: X Denied: Unanimous X

Garrett X Boney ___ Marshburn X Millette X Smith X Williams X